

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 833 OF 2013

IN THE MATTER OF:

Ms. ARUNA ROY

... Petitioner

Versus

UNION OF INDIA & ORS.

... Respondent

COUNTER AFFIDAVIT

ON BEHALF OF RESPONDENT NO. 3

I, Raj Pal Singh S/o Shri Khajan Singh, Director, Planning Commission, Yojana Bhavan, New Delhi do hereby solemnly affirm and declare on oath as under:

1. That I am working as Director in the Planning Commission and have been authorized to swear this affidavit. It is stated that, I am well conversant with the facts and circumstances of the case as such, competent to sign and swear the present affidavit.
2. That the contents stated in the present Writ Petition (Civil) are mischievous and have been filed in ignorance of the well established principle of Constitutional law and the law laid

down by this Hon'ble Court in a number of judgments and hence the same is not maintainable in the eyes of law.

3. That the present Writ Petition in the guise of the Public Interest Litigation is without any basis and therefore, the contents and averments stated in the present Writ Petition are denied unless specifically admitted by the answering deponent.
4. That the present Writ Petition (Civil), neither raises any question of law pertaining to the Constitution of India which needs interpretation of this Hon'ble Court nor substantiates as to how using the Aadhaar Number for welfare to the residents of India on a voluntary basis amounts to an invasion of the Right to Privacy guaranteed to the subject/s under Article 21 of the Constitution of India. It is submitted that the present writ petition fails to disclose the infringement of the Fundamental Right enshrined under Part III of the Constitution of India and hence is not maintainable under Article 32 of the Constitution of India and therefore, fit to be dismissed with exemplary cost.
5. That the Present Writ Petition filed by the Petitioner does not deal with the well established principle of law laid down by this Hon'ble Court in a catena of the judgment/s with regard to the question raised in the instant petition, and therefore, the respondent craves leave of this Hon'ble Court to deal with the

same in the backdrop of the background/history of the establishing the Unique Identification Authority of India (UIDAI) through a Notification.

66. PARAWISE REPLY:

6.1 That with regard to relevant paragraphs of the Writ Petition:

i) That as per information furnished by RGI, NPR, Ministry of Home Affairs, the need for creation of a credible citizen database having a system of secure form of personal identification of individuals has acquired importance due to a variety of reasons which include:

- (a) changing security scenario in the country,
- (b) realization for better targeting of services and benefits under different schemes of government, and
- (c) increasing identity frauds

ii) That in 2000 a Group of Ministers (GoM) was constituted to review the National Security System in its entirety and, in particular, to consider the recommendations of the Kargil Review Committee (KRC) and formulate specific proposals for implementation, which had recommended the following in Para 5.110 of its Report on 'Reforming the National Security System':

"Illegal migration has assumed serious proportions. There should be compulsory registration of citizens and

non-citizens living in India. This will facilitate preparation of a national register of citizens. All citizens should be given a Multi-Purpose National Identity Card (MPNIC) and non-citizens should be issued identity cards of a different colour and design. This should be introduced initially in the border districts or may be in a 20 Kms border belt and extended to the hinterland progressively. The Central Government should meet the full cost of the identity card scheme."

The recommendation of GoM was accepted by the Government in May, 2001.

- iii) That as a follow up of this, Citizenship Act, 1955 was amended (notified on 7.1.2004) by inserting Section 14 A which provided that 'the Central Government may compulsorily register every citizen of India and issue national identity card to him'. The Registrar General, India has been designated as the National Registration Authority / Registrar General of Citizen Registration under the Act. The complete procedure for implementing the scheme has been laid down in the Citizenship (Registration and Issue of National Identity Cards) Rules, 2003, which provide the administrative hierarchy required for the same. The scheme was conceived with a view to determine the citizenship of all those living in the country by applying the provisions of Citizenship Act, 1955 and amendments made to it from time to time.

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iv) That to test check feasibility of the processes, choice of technology and the methodology laid-down, a pilot project was undertaken for implementation in selected areas in 12 States and 1 Union Territory encompassing a population of 30.96 lakhs.

v) That following the experience of the pilot project, the proposal for the national roll-out by upscaling the approach adopted was recommended and presented to the Committee of Secretaries (COS) in October, 2006. The proposal envisaged setting up of about 6000 MNIC Centres at tehsil/ block levels with 2 Central Government officials at each centres (12,000 persons in all) besides provision for a secure "cyber-space" for creation of NPR, handling and transmission of data between the local service centres and national data centres. The implementation of the project was proposed on a Mission Mode basis, with the proposal for issuance of national identity cards only in strategic areas and on demand and on payment basis in other areas. The COS was apprised about the Unique Identification Number (UID) scheme of the Department of Information Technology (DIT) for creation of a residents' database based on the electoral rolls database of Election Commission of India to facilitate better targeting of services under various Government Schemes/Programmes.

- vi) That the concept of a unique identification was first discussed in 2006 when administrative approval for the project – "Unique ID for Below Poverty Line (BPL) families" was given on 3rd March, 2006 by the Department of Information Technology, Ministry of Communications and Information Technology. Subsequently, a Processes Committee to suggest processes for updation, modification, addition and deletion of data fields from the core database to be created under the Unique ID for below BPL project was set up on 03 July 2006.
- vii) That the COS had considered the proposal and noted that determination of citizenship was an involved and complicated manner. Therefore the UID scheme might go forward by creating a resident database based on electoral rolls and assigning a unique identity number to each resident. The rest of the population be covered during Census 2011 to prepare the National Population Register (NPR). An Empowered Group of Ministers (E-GoM) would be setup to decide on collation of the two schemes; MNIC of MHA and UID of DIT.
- viii) That a "Strategic Vision on the UIDAI Project" was prepared and submitted to this Committee by M/S Wipro Ltd (Consultant for the design phase and program management phase of the Pilot UIDAI project). It envisaged the close linkage that the UIDAI would have to the electoral database. The Committee also appreciated the need of a UIDAI Authority to be created

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by an executive order under the aegis of the Planning Commission to ensure a pan-departmental and neutral identity for the authority and at the same time enable a focused approach to attaining the goals set for the XI Plan. The Seventh Meeting of the Process Committee on 30th August 2007 decided to furnish to the Planning commission a detailed proposal based on the resource model for seeking its "in principle" approval. A true copy of UIDAI Project is annexed herewith this Affidavit as Annexure-R-I.

- ix) That the Prime Minister constituted an empowered group of Ministers (EGoM) on 4th December, 2006 to, inter alia, look into the methodology and specific milestones for early and effective completion of the Project and take a final view on these. At the first meeting of the EGoM held on 27th November, 2007, the need for creating an identity related resident database and identify and establish an institutional mechanism that will "own" the database and will be responsible for its maintenance and updating on an ongoing basis post its creation was recognised.
- x) That at the second meeting of the EGoM held on 28th January 2008, the proposal to establish UIDAI Authority under the Planning Commission was approved. The EGoM gave 'in principle' approval to the proposed strategy in which UID scheme would be undertaken for implementation first using

the existing data bases. Further it was decided that the UID number shall be allotted to all those in the database. Later, data collection for the persons in the country along with their photographs and finger biometrics to create the National Population Register (NPR) at the 2011 Census. The NPR so created would be managed with the UID data base. The UID authorities would be established under the Planning Commission at the Centre and the State levels for managing the UID data base including its continuous updating.

- xi) That the Planning Commission placed before the EGoM a detailed proposal for setting up UIDAI at the third meeting of the EGoM held on 7th August 2008. EGoM referred the matter to a Committee of Secretaries to examine and give its recommendations to the EGoM to facilitate a final decision.
- xii) That subsequent to the Committee of Secretaries recommendations, the fourth meeting of the EGoM was held on 4th November, 2008, wherein, it was decided that UIDAI may be notified as an executive authority and investing it with statutory authority could be taken up for consideration later at an appropriate time (A true copy of the minutes of meeting dated 4.11.2008 is annexed herewith this Affidavit as Annexure-R-II.).

xiii) That Unique Identification Authority of India was constituted and notified by the Planning Commission on 28th January, 2009 as an attached office under the aegis of Planning Commission. The role and responsibilities of the UIDAI was laid down in this notification. The UIDAI was given the responsibility to lay down plan and policies to implement UIDAI scheme and shall own and operate the UIDAI database and be responsible for its updation and maintenance on an ongoing basis. A true copy of the Notification dated 28.1.2009 is annexed herewith this Affidavit as Annexure-R-III.

xiv) That the issue of allowing UIDAI to function under executive instructions has already been considered by the Ministry of Law and Justice and Attorney General's opinion is clear that UIDAI can continue to enroll and perform its functions under executive instructions. A true copies of the opinion rendered by Law Ministry and Learned Attorney General are annexed herewith this Affidavit as Annexure-R-IV. The UIDAI could step up enrolment in the States allotted to it, quickly complete enrolment in certain districts and States where Aadhaar could be then deployed as a platform for delivery of public services and demonstrate the utility of Aadhaar as a major governance tool. Once the utility of Aadhaar is established, many apprehensions that have been raised by the Standing Committee would get addressed to a

considerable extent. It would be easier for the Government to ensure passage of the Bill in the Parliament once the benefits of Aadhaar are demonstrated on the ground.

xv) That the Unique Identification project was conceived to provide a unique identification number as a proof of identity to each resident across the country. Before the advent of UID Project, there has been no single document which was uniformly acceptable as a proof of identity across India, irrespective of age, gender and familial connections. It was recognised that the inability to prove identity is one of the biggest barriers preventing the poor from accessing benefits and subsidies. The aim is to ensure enrolment of children, differently-abled persons, the poor and marginalised for many of whom Aadhaar may be the first form of identification so as to facilitate an inclusive development trajectory.

xvi) That the Aadhaar number is a 12-digit random number devoid of any classification based on caste, creed, religion and geography. The number will be stored in a centralized database and linked to the basic demographics and biometric information – photograph, ten fingerprints and iris – of each individual. The number can be verified and authenticated in an online, cost-effective manner, which is robust enough to eliminate duplicate and fake identities. So far, the identification procedures available were not robust. Existence of a rich

database of UID numbers will provide the Government with the possibility to put in place a formal process of de-duplication. Having such a process in place is likely to improve targeting of beneficiaries, curb pilferage and eliminate waste.

xvii) That in a meeting held on 25th January, 2012, under the chairmanship of Hon'ble Prime Minister, it was agreed that in those States where UIDAI had made progress in enrolment, UIDAI would complete its enrolment and list of States was finalised accordingly. The total population covered under UIDAI was 61.15 crore. In view of this UIDAI was allowed to enrol 60 crore number by EFC which was formally approved by the Cabinet Committee on UIDAI in its meeting on 27th January, 2012.

xviii) That the Government spends huge amount of resources on provision of benefits and services to its people with the objective to promote inclusive development. For example, during 2013-14, Budget Estimate for Total Expenditure is Rs. 16,65,297 crore out of which Plan Expenditure is Rs. 5,55,322 crore. A very large number of residents, primarily the poorest are not able to access these services and benefits intended for them for want of being able to prove their identity to service providers and agencies that dispense them. Provision of proof of identity in the form of Aadhaar will in turn provide the marginalised and vulnerable sections of the society access to

these services and benefits. By weeding out fake beneficiaries, Government will not only be able to make substantial savings but will also allow it to channelize the huge amount of Plan funds of the Government to the intended beneficiaries. Usage of Aadhaar can act as an important tool for effective monitoring of various programs and schemes of the Government.

6.2 In the aforementioned facts and circumstances of the case, more particularly, in view of the well established principles of law by this hon'ble Court in a catena of the judgments dealt with herein above, the prayer clause of the Writ Petition is disputed and denied. Therefore, it is respectfully prayed that the present Writ Petition be dismissed with costs.

DEPONENT


VERIFICATION:

Verified by me on this day of 2013 that contents of the aforesaid Counter Affidavit are true and correct to my knowledge so derived from the official records. No part of it is false and nothing material has been concealed there from.

DEPONENT

Filed By
D.S. Mahajan
C. A.S.
23386256


ANNEXURE -R-I




WIPRO
Applying Thought

STRATEGIC VISION


UNIQUE IDENTIFICATION OF RESIDENTS




Strategic Vision



NISG National Institute for Smart Government
Strategic Planning-Project Consulting-Capacity Building



Department of Information Technology
Ministry of Communications & Information Technology
(Govt of India)



Wipro Consulting

UID OF RESIDENTS – VISION, MISSION AND OBJECTIVES

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Preface

Project Unique Identification is a Planning Commission, Government of India (GoI) initiative, steered by the Department of Information Technology – GoI, with the objective of creating a central database of information on residents and assigning a Unique Identification (UID) number to each resident in the country, as the basis for efficient delivery of welfare services.

UID would authenticate every person's enlistment for government services and benefits through a single centralized system rather than each government department or agency investing in infrastructure, systems and procedures for identifying residents under its schemes, individually and independently. UID would facilitate a common proof for residence and identity over period of time.

To this end, the project envisages incorporating UIDA as part of existing databases thereby providing linkages with all such databases to the central UID database, as well providing for future additions to the content-fields of the database by the user-agencies as per their requirements.

One of the key advantages envisaged as an outcome of the project is that the Unique ID will help in reducing identity-related frauds and allow only targeted persons to avail benefits from the government.

Given the diversity in requirements of the user-agencies a Vision Workshop was held to brainstorm on the UID initiative and provide inputs for the Project, on 21 November 2006. The workshop examined similar initiatives being implemented at the State level, discussed the vision, and mission for the project (detailed in this document) and arrived at a common understanding of the purpose of, and approach to, the Process Study. This document is intended to lay down the Strategic Intent for the initiative based on the summarization of the deliberations of the vision workshop and various Central and State Government Departments.

Implementing agencies, for the proposed initiative, include NICTE/NIC, as the technical solution provider for the creation, generation and operation of the central UID database and Wipro, as consultants to the Process Committee, chaired by the Principal Adviser, Planning Commission, to design the UID and an associated information system that is based on the UID, and also to define the processes for creation and maintenance of the UID as well as the administrative procedures and user manuals.

1. Strategic Vision

1.1 Rationale for UID

In human life cycle, there is a need for government services at various stages and at each stage, the unique resident ID can act as an identifier through which services can be provided to the authorized person.

At present, various government departments are investing in creating infrastructure, systems and procedures for verifying entitlement claims of residents under various schemes and initiatives of the Government (PAN, Passport, Voter ID, Driving License, etc.). From the resident's point of view there is a need to ascertain that services reach the right persons. From the department's point of view, it is a time-consuming exercise to create and maintain their own database, which is a duplication of efforts, and could be avoided had there been a single database. However, such a database does not exist, nor is there any mechanism for different departments to share a universal database to identify the resident.

In fact, efforts of all agencies (Election Commission, Ministry of Rural Development, Office of the Registrar-General of India, Public Distribution System, and so on) are "stand-alone" and "one-off" and hence efforts so far are not leveraged optimally.

Many countries use a unique identification number as a means of tracking their permanent and temporary residents for the purposes of work, National ID, taxation, government benefits, health care, and other government related functions (driver's license, passport, payroll, e purse, etc.). The ways in which such systems are implemented is specific to each country, but in most cases, a resident is issued a card at birth or when they reach a legal age (typically the age of 18).

In the Indian context, there is a need for UID for better monitoring and targeting of social benefits and employment programmes, and at the same time, identifying synergies between various ID initiatives prevalent. The UID system would ensure that residents need not prove they exist every time they interface with the government or the private sector.

1.2 Vision

UID would be a unique number used for *identification* of the residents of India for various statutory, administrative, developmental and commercial purposes.

The Unique ID would provide an easy and common means of identification of all the residents of the country by all government agencies, thereby enhancing efficiency, transparency, reliability and effectiveness at affordable costs to the common person in the delivery of public services. This, in turn, would authenticate every person's right to government services and benefits through a single system rather than all government departments investing in creating infrastructure, systems and procedures for verification of residents under various schemes of the Government.

UID OF RESIDENTS – VISION, MISSION AND OBJECTIVES

The UID would enable better monitoring and targeting of social benefits and employment programmes. On an overall basis:

- it would be the common unique identifier for residents
- the UID would act as a conduit to improve targeted delivery of the fruits of a growing economy to the common person, and
- it would aim at eliminating the need for multiple identification mechanism prevalent across government departments.

Vision Statement

Creating a unique identification system of all residents in the country for efficient, transparent, reliable and effective delivery of various welfare and private services to the common person.

1.3 Unique ID and its Benefits

It is envisaged that the UID, together with the socio-economic data, would enhance:

- Efficiency and effectiveness of the social sector schemes
- Convenience and quality of public service
- Improvement in serviced delivery system, and
- Transparency in administration

The key benefits to be realized by the Government, residents and the private sector are as listed below:

A. Benefits to Government

- The UID would enable various government departments to leverage an easy and reliable beneficiary identification mechanism
- It would help in building on the existing identification mechanism, leading to overall efficiency gains in governance and better delivery
- Reduce identity-frauds across the country
- Once implemented, the UID would eliminate the need for creating elaborate beneficiary-identification mechanisms and, in turn, would reduce duplication of efforts across Government machinery
- With robust beneficiary identification mechanisms and cross-referencing of databases, the UID would support the Government of India in better (targeted) policy-formulation under various schemes and programmes
- Overall, the UID would help in improving transparency in administration

B. Benefits to Residents

- Reduce hassles in their interactions with multiple Government departments for establishing their identification
- Ensure convenience in availing various services - both public and private
- The UID number would act as a single window for residents to establish their identity and avail benefits

C. Benefits to Private/NGO Sector

- Private sector would be able to leverage the resident identification infrastructure and, in turn, contribute to effective development activities
- Use UID to speed up certain businesses, especially in the insurance and credit sectors
- May eliminate the need for the private sector to set-up parallel identification systems leading to improved efficiency in delivery of their services
- A reduction in identity-related frauds in the service delivery

2. Strategic Dimensions for the Success of UID

It is envisaged that, for better acceptance of UID across the country by residents, Government departments and the private sector, the following cornerstones are deemed pre-requisites:

II.1 Applicability and Accessibility of UID

To start with, UID should be used for effective implementation of the social sector schemes outlined in the 11th Plan. At the same time, the UID initiative should also look at taking a mixed approach to social services and neutral services based on the readiness of the implementing States. This would help in checking malpractices, better selection of bonafide beneficiaries and ensuring that benefits reach them, thus checking leakages in the system and improving delivery mechanism.

Due emphasis would be on making UID number easily accessible to both residents and Government or its agencies without compromising on security aspects.

II.2 Intensive Use and Validation by Multiple Agencies to Achieve Accuracy over Time

Fresh data collection and validation is a tedious, expensive, time-consuming and error-prone process. Conversion into digital format is an arduous task that introduces additional inaccuracies and fresh cost and time implications. Accuracy and perfection of data is, and will remain, a continuing challenge in this complex exercise. Yet, speed is important. Therefore, it is intended to use an existing data base available in electronic and bilingual format, namely the electoral roll data base, while being fully cognizant of its current limitations regarding accuracy, currency and completeness of data.

It is envisaged that intensive usage and validation of the resident data by multiple agencies would achieve higher accuracy levels over a period of time.

II.3 Leverage Collective Strength of Government (Technology – Enabled Collaboration)

The basic premise for the success of UID is the concept of "one owner, many users." Practically, each department would be in a position to add and own any field required for its purpose backed up by 100 percent foolproof tracking of all modifications.

In this regard, technology would play a central (crucial/vital ??) role in the use of UID by various departments. Technology-enabled seamless integration across departments would ensure widespread use of UID and continuous validation of the database by leveraging the collective strength of the Government.

II.4 Linkages with other Databases

Linkage of UID database with other databases would ensure continuous updation and use-based validation. This could be ensured by a 'symbiotic' linking of all other major databases to UID and vice-versa for delivery of services/benefits.

UID OF RESIDENTS – VISION, MISSION AND OBJECTIVES

In this direction, Election Commission's database would be used as the base database; however, some links between UID and the Election Commission's database may be maintained for cross-referencing. At a later date, it is envisaged that UID and Multi-purpose National Identity Card (MNIC) may converge.

Further on, for all future Census and sample surveys, the UID would be indicated in the Identification Block of the structured questionnaire for data collection and it is suggested that the Registrar-General of India (RGI) would leverage UID for the 2011 census data.

II.5 Processes

For the successful adoption of UID, it would be imperative to build robust processes to update the UID data continuously and, at the same time, opportunities for continuous updating of varying data would have to be explored. For this, transactions from existing systems would have to be linked to UID, by ensuring enthusiastic participation of stakeholder-departments.

II.6 Statutory Mandate

Importantly, statutory backing would be required for the adoption of UID by residents, Government departments, its agencies and the private sector in the long term.

3. Realizing the Vision-Mission and Objectives

In order to realize the envisaged vision, it is suggested that a phased approach to be adopted with clear objectives for the following time horizons:

- Short Term
- Medium Term
- Long Term

III.1 Short Term Mission (3 Years) – Use of the UID for Specific Schemes(BPL) in identified States

A. Stakeholders

Adopting a phased approach for the implementation of the UID across the country, starting with potential users of UID would be select Government departments (implementing BPL schemes), identified States and beneficiaries of the selected BPL schemes.

Key expectations of the departments, at this stage, would be evaluating the practicality of implementation of UID for specific schemes, establishing the linkage between UID and BPL databases across identified States and tracking delivery of benefits to bonafide beneficiaries. On the other hand, residents would look forward to better service delivery with easier access to benefits.

B. Pre-requisites

For the mission to be achieved in the time-specific timeframe, the pre-requisites would include:

- Centralized availability of the Election Commission's resident data post data-clearing
- Identification of an appropriate custodian/owner of the UID database
- Establishment of the required institutional framework for implementation of UID in the identified States

C. Key Objectives

In the initial stages of implementation, the UID initiative would strive to attain the following objectives:

- Assign Unique ID from existing digital database of the Election Commission (for residents 18 years of age and above)
- Create awareness about the initiative amongst potential users
- Establish linkages between UID database and the BPL database
- Facilitate UID adoption in the implementation of welfare schemes
- Establish institutional mechanism for administering the UID and build appropriate capacity
- Authorize and authenticate resident data across the country for use by various departments

III.2 Medium Term Mission (5-7 Years) – State-wide Implementation and Use of UID for Major Schemes

A. Stakeholders

In the medium term, the key stakeholders would be most of the Government departments, majority of State Governments and all the beneficiaries of Government schemes and services.

Key expectations of the Government departments from the UID initiative in the medium term would be a wider coverage of residents eliminating the need for investment in parallel resident identification infrastructure by individual departments. At the same time, residents would prefer the UID to act as an acceptable and authentic identification mechanism for the majority of services entitled to them.

B. Pre-requisites

To achieve State-wide usage of UID and adoption of the same for delivery of the schemes, some of the pre-requisites would include:

- Building Capacity across Ministries to implement the UID in major schemes being implemented by them across the country
- Establishing institutional mechanism for resident verification

C. Key Objectives

The key objectives for the UID initiative in the medium term would include:

- Assigning Unique ID to all residents
- Completing all preparatory work for implementation of UID for all major schemes in all States
- Evolving procedures for maintenance and updating of UID and facilitating linkage of UID database with other major databases.
- Implementing UID for majority of schemes in as many States as possible
- Enhancing efficiency, transparency, reliability and effectiveness in the delivery of public services
- Facilitating cross linkage (two-way linkages) of UID database with the databases of other departments

III. 3 Long Term Mission (10 Years) – Make the UID as the de-facto Identifier for all Residents in the Country

A. Stakeholders

It is envisaged that, in the long term, UID would transform into being a de facto identifier for all residents of the country. In this scenario, potential users of UID would be all the residents and all government and private agencies needing authentication of resident identity prior to delivery of service.

For the residents, the key expectation from this initiative would be the elimination of the requirement of carrying multiple identification proofs for accessing various services during his/her lifespan ensuring better, faster and more transparent delivery of services.

For the service providers, both Government and private sector, the UID initiative would eliminate the need for investing huge sums of money in establishing the identity of the recipient of services and in preventing identity-frauds.

B. Pre-requisites

For realising the long term mission, some of the pre-requisites would include:

- All residents below 18 years of age are brought into the UID database, since the Election Commission's database (the primary source for the UID database) accounts only for residents above 18 years of age
- Executive and legislative mandate for all services providers (Government and private) to deem the UID number as THE universal identifier for service delivery

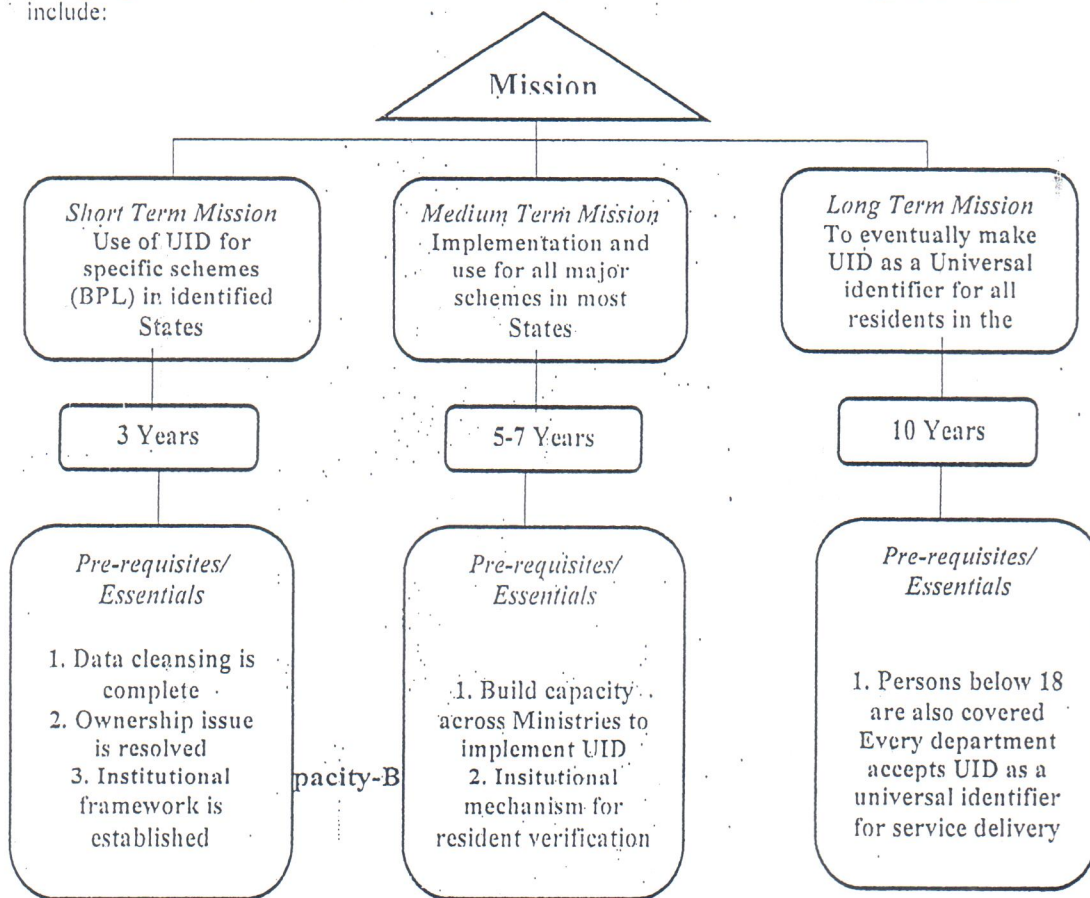
C. Key Objectives

Key objectives in the long term would include:

- Implementation of the UID in all citizen-centric service delivery as the universal identifier
- Introducing the UID in all Ministries, departments, and to all private service providers as the only identifier

III.4 Snapshot across Time Horizons

As highlighted above, phased approach for UID adoption and implementation across India would include:



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For the success of a national level initiative like the UID, there is an immediate need for identifying or establishing an appropriate Authority for administering UID initiative and be the custodian and owner of the two major components of UID:

- Core Database
- Application Database

In respect to the core database, this agency may be an existing entity capable of administering the UID across the country; conversely, it could be a new agency equipped with the requisite institutional framework and legal mandate to administer the UID system across various states.

It is envisaged that the application databases would be maintained by the respective departments and the said departments would continue to be the owners of their respective application databases.

Given the international perspective on similar initiative, capacity-building would be a critical element to ensure the success of the UID initiative. Capacity-building initiatives would have to be implemented for:

- Owners of the core database
- Owners of the application databases
- User-departments

5. Implementation Challenges

There have been many Unique ID initiatives across the world that has yielded mixed results. While some have failed, others have had limited success. In the Indian context, some of the key implementation challenges foreseen include:

- Change management within the Government machinery and residents across the length and breadth of the country is seen as the biggest challenge to the adoption of UID
- Setting up governance structures for implementation at various levels may take a long time before it becomes ease of use vs. tight control/security
- s fully operational, leading to loss of momentum and zeal for implementation
- Creating and maintaining infrastructure in a vast and diverse country such as India could turn out to be a challenge in itself
- Standardising geographical (habitation/villages) codes, applications, databases and processes, keeping localisation requirements in mind, would require a thorough appreciation of the dynamics of a diverse nation like India
- Security and privacy. This would require a lot of focus and conviction to ensure adoption by different stakeholders
- Complexities involved in establishing linkages between UID and other major databases would be critical to adoption of UID by other Departments
- Addressing the limitations of the Election Commission's data and building on the same would be a challenge in itself
- Some other challenges to be addressed would include:
 - o Ease of use vs. tight control/security

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- Departmental control vs. collaboration among departments
- Rigorous procedures vs. convenience of individuals
- Rapid adoption vs. manageable phasing
- Transparency vs. right to privacy

6. Conclusion

Given the pathbreaking perspective as envisaged in the vision for the proposed UID initiative and the complexities involved, there is a need to undertake the initiative on a Mission Mode.

The UID initiative should ultimately encompass multiple linkages although it may have limitations in the near short term. However, it envisages the linking of whole country in a not-too-a-future by assigning a unique identification number to each and every resident which he/she can use achieving the same through short-term/medium-term and long-term objectives while assigning UID for each resident in a phased manner.

ANNEXURE – R-II

Annexure XI

Minutes of the Fourth Meeting of the EGoM to collate two schemes – the National Population Register (NPR/MNC) under the Citizenship Act, 1955 and the Unique Identification Number (UID) project of the Department of Information Technology (DIT)

Date: 04.11.2008
Venue: 162, Committee Room South Block
Time: 16.00 PM
Participants: List attached

1. The Chairman initiated the meeting by stating that the objective of the Empowered Group of Ministers (EGoM) was to collate the two schemes-the National Population Register (NPR/MNC) under the Citizenship Act, 1955 and the Unique Identification Number (UID) project. Recalling the past proceedings and decisions of the EGoM, he referred to the decision in the 2nd meeting to set up the UID Authority UIDAI under the Planning Commission (PC) with the direction to the PC to ensure necessary approvals within time lines indicated for creation and establishment of the UIDAI.

Pursuant to this decision, the PC had placed before the EGoM a detailed proposal for setting up UIDAI which was considered in the last meeting i.e. the third meeting held on 07-08-2008. Consequent to the deliberations of the EGoM on the proposal, ten issues were referred to the Committee of Secretaries (COS) headed by the Cabinet Secretary, to examine the issues raised and give its recommendations to the EGoM to facilitate a final decision in the matter.

He informed the members that the recommendations of the COS are now placed for consideration and requested the members to take up for consideration each of the issues along with the recommendations to arrive at a final decision.

2. Shri R. Chandrashekhar, Special Secretary, Department of IT with permission of the Chair presented the recommendations of the COS on each of the ten issues referred to it.

Issue 1

Should the UIDAI be a statutory or executive authority? If statutory, at what stage - initially or later? If statutory, how would this role be reconciled with statutory role of National Registration Authority (NRA) under Citizenship Act?

COS Recommendation:

Initially UIDAI may be notified as an executive authority, as proposed. The issue of investing the UIDAI with statutory authority and the reconciliation of such statutory role with NRA can be taken up for consideration later at an appropriate time, if found necessary.

Decision of EGoM: Recommendation of COS was approved.

Issue 2

Should the supplementation of ECI data in respect of under 18 residents be undertaken by UIDAI building, directly or indirectly, National Register of Students, National Register of children/infants and National Register of Births and Deaths OR should this additional information be extracted as a subset from the NPR being compiled by RCI as and when it is ready?

COS Recommendation:

UIDAI may limit its activities to creation of the initial database from the Electoral Roll/EPIC data and verification and validation of the same through BPL and PDS data and updation of electoral rolls. UIDAI may not directly undertake creation of any additional database but will find appropriate systems to supplement the CID database. UIDAI may however additionally issue instructions to agencies that undertake creation of databases, to ensure standardization of data elements that are collected and digitized to enable collation and correlation with UID and its partner databases.

Decision of EGoM: Recommendations of COS was approved

Issue 3

What should be the specific role of PRIs in line with the decision of the 2nd EGoM?

COS Recommendation:

UIDAI will take its own decision as to how to build the database. They may have to refer to many institutions for the same. PRIs should be leveraged to the maximum extent feasible in validation of data and its cross linking with databases of other designated agencies.

Decision of EGoM: Recommendation of COS was approved

Issue 4

Should the scope of activities of UIDAI cover the following extended set of activities proposed by PC? (a) NRS, (b) NRC (c) NRB&D, (d) National Register of Assets and (e) Unique Geographical Identity Code (UIG) up to habitation level.

COS Recommendation:

Issues (a) to (d) have been clarified in recommendations on Issue 2.

CID may be operationalised with UIG upto village level, initially. As and when UIG upto habitation level becomes available it may be incorporated in the UID database.

Decision of EGoM: Recommendation of COS was approved

Issue 5

Should the UIDAI be established under the Planning Commission (PC) in view of ARC recommendations of 1965 giving PC only a recommendatory role? If not under PC, under which ministry/department/organization/authority should it be anchored?

COS Recommendation:

In view of the fact that the project has a pan departmental scope and objective and Planning Commission is the only agency that deals with most departments, it was decided that UIDAI be anchored in Planning Commission as proposed"

Decision of EGoM: Approved the COS recommendation with the stipulation that this decision would be valid for five years and thereafter, a view could be taken by the Government on where the UIDAI would finally be located with the Government.

Issue 6

Is the staff size of the UIDAI proposed justified? Is the superstructure appropriate?

COS Recommendation:

It was decided that the Committee will not go into the details of the proposal at this stage. Approval for the complete structure and full contingent of staff may be processed through DoE and CCEA as per normal procedure. However, approval of EGoM may be sought for constitution of UIDAI with a small, lean core team (upto 10 personnel) initially.

Decision of EGoM: EGoM accepted the recommendation of COPS and accorded its approval to the constitution of the UIDAI with a core team of 10 personnel at the central level including one officer at the level of Additional Secretary to the Government of India, one officer at the level of Joint Secretary to the Government of India and other lower level support staff.

EGoM further directed that PC should separately place the detailed proposal other than the core team with the complete structure, rest of the staff component and organisational structure of UIDAI at the central and state levels before the

ANNEXURE- XI

Cabinet Secretary for his consideration, prior to seeking approval under normal procedure through the DOE/CCEA. The EGoM directed to the Planning Commission to complete this work by the end of December, 2008.

Issue 7

Should the UIDAI at central and state levels be a central authority as envisaged in the proposal of the Planning Commission or should it follow the ECI basic framework in respect of structure at central and state level as well as the relationship between central and State set up?

COS Recommendation:-

UIDAI at the state level comprising of State UID Commissioner and complete staff be fully funded centrally at least for the first five years, as proposed. CEO of State UID Authority should be an officer of the level of Joint Secretary appointed by GoI from the pool of officers belonging to that particular State. Other officers could be appointed on deputation.

Staff could be appointed on contract. An Advisory Board having Chief Secretary as its chairman with Secretary(ies) - Home, Finance, Revenue, RD, Food and Chief Electoral Officer as members could be created to monitor and resolve issues. CEO State UID Authority to be Member Secretary.

Along with core staff in UIDAI at the Central level similar structure should be created in States so that work starts simultaneously at all levels.

Decision of EGoM: EGoM accepted the COS recommendation and accorded its approval to the constitution of the State UID Authorities simultaneously with the Central UIDAI with a core team of 3 personnel including one officer at the level of Joint Secretary to the Government of India.

Issue 8

What should be the target date for the UID to be made available for usage by an initial set of authorised users?

COS Recommendation:

It should be one year from the date of approval of the full contingent of staff for UIDAI (expected by Dec 2008). Consequently UID can be made available for use by initial set of authorized users by Dec. 2009.

Decision of EGoM: Recommendation of COS was approved

Should the cross-verification of UID with BPL and PDS be carried out simultaneously or sequentially? Should the linkage with BPL be done with existing data of BPL Survey of 2002 or proposed BPL Survey of 2007 (yet to be undertaken)?

COS Recommendation:

The cross verification exercise may be taken up simultaneously to the extent possible.

Decision of EGoM: Recommendation of COS Was approved

Issue 10

Procedure to be adopted for obtaining approval of UIDAI:

- (a) EGoM or
- (b) EFC – CCEA

COS Recommendation:

Approval of EGoM may be sought for constitution of UIDAI with a small lean core team (of upto 10 personnel) initially. On issue 7, COS through Cabinet Secretary has recommended that similar structure should be created in the states so that work starts simultaneously at all levels. Approval for the complete structure and full contingent of staff may be processed through EFC and CCEA as per existing procedure.

Decision of EGoM: Recommendation of COS was approved.

However, prior to seeking approval for the complete organisational structure and full component of staff through DoE and CCEA as per existing procedure, the Cabinet Secretary should convene a meeting to finalise the detailed organisational structure, staff and other requirements.

3. Chairman's concluding address:

(i) It also needs to be appreciated that the whole exercise being technology based and system driven, there is immense scope for outsourcing the data collation and validation work and other tasks to expert agencies in the public or private sector through a transparent process while retaining requisite control over sovereign functions. In the context, he mentioned the Passport Seva Project where retaining the sovereign functions within government (MEA) rest of the infrastructure, management and software development functions have been outsourced through a transparent process to private sector.

(iii) He stated that the UID project is unique in that the organisation (UIDAI) has to work in close collaboration with large number of institutions and agencies both within and outside government and will take at least five years to stabilize. The government at that time may need to take a fresh view particularly in light of further advancements in technology.

He concluded by appreciating the active contribution of the members and officials in the deliberations and thanked them for enabling the EGoM to expeditiously complete the work assigned to it.

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List of Participants:

1. Shri Pranab Mukherjee, Minister of External Affairs
2. Shri Shivraj V Patil, Minister of Home Affairs
3. Shri A Raja, Minister of Communications & Information Technology
4. Shri Montek Singh Ahluwalia, Dy. Chairman- Planning Commission
5. Shri Jainder Singh, Secretary- Department of Information Technology
6. Shri Subas Pani, Secretary- Planning Commission
7. Shri A.N.P. Sinha, Secretary-Panchayati Raj
8. Smt. Rira Menon, Special Secretary- Department of Expenditure
9. Shri R Chandrashekhar, Special Secretary-Department of Information Technology
10. Shri D K Sikri, Registrar General of India, Ministry of Home Affairs
11. Shri C S Kedar, Joint Secretary, Cabinet Secretariat
12. Shri Shankar Aggarwal, Joint Secretary, Department of Information Technology

MOST IMMEDIATE

F.No: 171/2/2008-CA.V.

Government of India
Cabinet Secretariat
Rashtrapati BhawanNew Delhi, the 22nd January, 2009OFFICE MEMORANDUM

Subject:- Issues raised by the EGoM to collate two schemes, viz., the National Population Register (NPR/MNIC) under the Citizenship Act, 195, and the Unique Identification Number (UID) project of the D/o Information Technology

Reference D/o Information Technology's O.M. No. 3(27)/2006-EGPMU(Pt 1), dated 26th December, 2008 regarding Governance structure, Institutional Framework, Organizational Structure and staff component of the Unique Identification Authority of India (UIDAI). While giving approval to the constitution of the UIDAI, with a core team of 115, including ten personnel at the central level including one Director General and Mission Director and one Deputy Director General, the EGoM had directed Planning Commission to place the detailed proposal with the complete structure, rest of the staff component and organizational structure of UIDAI before the Cabinet Secretary for his consideration, prior to seeking approval under normal procedure, through the DoE/CCEA.

2. The proposal has been considered by the Cabinet Secretary in pursuance of the decisions of the Empowered Group of Ministers taken in their meeting on 4th November, 2008, and it is accordingly recommended that -

- (i) the notification for constitution of the UIDAI, along with creation of the core team as approved by the EGoM be issued immediately and steps should be taken to make the Core Team operational;
- (ii) A High Level Advisory, Monitoring and Review Committee headed by Deputy Chairman, Planning Commission, consisting of following members may be constituted to oversee the work of authority
 - (a) Member/Secretary, Planning Commission
 - (b) Home Secretary
 - (c) Secretary, D/o Information Technology
 - (d) Secretary, Planning Commission
 - (e) Director General & Mission Director as Member Secretary
- (iii) A Member, Planning Commission, or the Secretary, Planning Commission may also be assigned the task of looking after the work proposed, in the structure outlined by the Planning Commission, of the Chief UID Commissioner.
- (iv) As approved by EGoM, the Core Team consisting of Director General & Mission Director with other supporting staff may be put in place immediately. Need based creation of posts can be undertaken later after due examination in each case.

This issues with the approval of Cabinet Secretary.

Sd/-
(C.S. Kodar)
Joint Secretary
Tele:23011964

(TO BE PUBLISHED IN PART-I, SECTION-2 OF THE GAZETTE OF INDIA)
GOVERNMENT OF INDIA
PLANNING COMMISSION

Yojana Bhawan, Sansad Marg.
New Delhi, 28 January, 2009

NOTIFICATION

No. A-43011102f2009-Admn.I: In pursuance of Empowered Group of Ministers' fourth meeting, dated 4th November 2008, the Unique Identification Authority of India (UIDAI) is hereby constituted and notified as an attached office under aegis of Planning Commission with following terms of reference and initial core staff composition:--

COMPOSITION:

2. UIDAI shall be set up with an initial core team of 115 officials and staff as per details given below:

Post	Level	No. of Posts
UID Authority of India		
Director General & Mission Director	Additional Secretary, Govt. of India	1
Deputy Director General (DDG)	Joint Secretary, Govt. of India	1
Assistant Director General (AoG)	Director, Govt. of India	1
Support Staff		
PS	PS	3
Peon	Peon	2
Driver	Driver	2
Total Manpower		10
State/UT Units of UIDAI		
State/UT UID Commissioner	Joint Secretary, Govt. of India	35
Support Staff		
PS	PS	35
Peon	Peon	35
Total Manpower		105
Grand Total		115

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Role and Responsibilities of UIDAI

3. UIDAI shall have the responsibility to lay down plan and policies to implement UID Scheme, shall own and operate UID database and be responsible for its updation and maintenance on an ongoing basis.
4. Implementation of UID scheme will entail, *inter alia*, following responsibilities being undertaken by UIDAI:
 - Generate and assign UID to residents
 - Define mechanisms and processes for interlinking UID with partner databases on a continuous basis
 - Frame policies and administrative procedures related to updation mechanism and maintenance of UID database on an ongoing basis
 - Co-ordinate / liaise with implementation partners and user agencies as also define conflict resolution mechanism
 - Define usage and applicability of UID for delivery of various services
 - Operate and manage all stages of UID Lifecycle
 - Adopt phased approach for implementation of UID specially with reference to approved timelines
 - Take necessary steps to ensure collation of NPR with UID (as per approved strategy)
 - Ensure ways for leveraging field level institutions appropriately such as PRIs in establishing linkages across partner agencies as well as its validation while cross linking with other designated agencies
 - Evolve strategy for awareness and communication of UID and its usage
 - Identify new partner/user agencies
 - Issue necessary instructions to agencies that undertake creation of databases, to ensure standardization of data elements that are collected and digitized and enable collation and correlation with UID and its partner databases
 - Frame policies and administrative procedures related to hiring / retention / mobilization of resources, outsourcing of various tasks and budgeting & planning for UIDAI and all State units under UIDAI.
5. Planning Commission shall be the nodal agency for UIDAI for providing logistics, planning and budgetary support. Planning commission would provide initial office and IT infrastructure at central level.

6. Government housing will be provided to officers of UIDAI appointed on deputation from general pool of Department of Urban Development.

Sd/- 28.1.2009

(Subas Pani)

Secretary to the Government of India

The General Manager
Govt. of India Press
Faridabad.

Copy to:

1. Secretary to the President, Rashtrapati Bhavan, New Delhi
2. Secretary to the Vice-President, Maulana Azad Road, New Delhi
3. Cabinet Secretary, Rashtrapati Bhavan, New Delhi
4. Principal Secretary to the Prime Minister, South Block, New Delhi
5. Private Secretary to the Deputy Chairman, Planning Commission
6. All Ministers/Departments of Govt. of India
7. Chief Secretaries of all States/Union Territories
8. Secretary General, Rajya Sabha Secretariat, New Delhi
9. Secretary General, Lok Sabha Secretariat, New Delhi
10. Pr. Adviser (Admn & PC)/AS & FA/Adviser (C & I)/Director(GA)/DS (Admn.)
11. Pay & Accounts Officer, Planning Commission
12. Drawing & Disbursing Officer, Planning Commission
13. Accounts -I Section, Planning Commission.

FTS No.2130/Law Secretary
Ministry of Law & Justice
Department of Legal Affairs

The Planning Commission has sought the opinion from the Attorney General/Solicitor General on the following issues:-

- i) Whether aadhaar numbers (as envisaged under clause 3(2) of the National Identification Authority of India Bill, 2010) can be issued before the passing of the National Identification Authority of India Bill, 2010 by the Parliament?
- (ii) Whether issuing aadhaar numbers before the passing of the National Identification Authority of India Bill, 2010 tantamount to overreaching and circumventing the Parliament by the executive?
- (iii) Whether allotting Rs.1900 crores which for the purpose of issue of aadhaar numbers by the Government in the Budget tantamount to the executive circumventing the Parliament?
- (iv) Whether issue of Aadhaar numbers before passing of the Bill involving colossal expenditure to the exchequer is a violation of the fundamental right to privacy of the Citizen under Article 21 of the constitution.

2. The matter has been examined by this Department and opined that "till legislation is passed, the Authority can continue functioning under the executive order and collect information/data for implementation of the UID Scheme. Such implementation can be done by giving wide publicity to the Scheme and by persuading the agencies/individuals to part with necessary information. However if any agency/individual is not willing to provide the desired information no legal action can be taken in the absence of a statutory backing."

3. We have examined all the above four issues and our view is as follows:-

Issue No. (i) & (ii)

It is an established law that powers of the executive are coextensive with the legislative power of the Government. However, the executive power cannot act against the provisions of a law. The Government is not debarred from exercising its executive power in the areas which are not regulated by the specific legislation. The Apex Court in *Vishakha V/s State of Rajasthan* (1997 6 SCC 241) held that "Article 73 provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the Union is, therefore, available till the Parliament enacts to expressly provide measures needed to curb the evil." Attention is also invited to the case of *Rev. Fr. Joseph v/s State of Kerala* (AIR 1958 Kerala 290) wherein the Hon'ble High Court of Kerala held that,

(46) The question then is does the impugned order directly or indirectly seek to achieve the result of the Presidential assent by making a law of Cl.9 of the Bill? If does not. All that it does is to do what the State Government has the power to do even without such a law. The power of the State legislature to make laws on the subject of education remains altogether unaffected by the fact that a Bill has passed on the subject is yet to become law. The fallacy lies in the assumption that when a legislature has passed a Bill, its legislative competence in respect of the matters covered by the Bill is at an end. Obviously that is not so.

The legislative power is not whittled down by the making of the Bill and whether the Bill becomes law or not, remains undiminished and still extends to the very matters covered by the Bill. The executive power of the State

Therefore still extends to the whole subject of education, even to matters covered by the Education Bill, and until the Bill becomes law, unaffected by it. Of course, once the Bill becomes law, the power can be exercised only in accordance with its provisions for the executive power of a State can be exercised only in accordance with and in obedience to the law. But that does not mean that the power of the executive is confined to be execution of laws."

4. From the above it is clear that executive power on the subject remains altogether unaffected by the fact that a Bill has been introduced in the House, on the subject, is yet to become law. In this view of the matter, there appear to be no legal objection to issue the Aadhaar numbers before passing of the National Identification Authority of India Bill, 2010 and the same may not amount to be over reaching and circumventing the authority of the parliament by the Executive.

5. Issue No. (iii) Whether allotting Rs. 1,900 crores which for the purpose of issue of Aadhaar numbers by the government in the Budget tantamount to the executive circumventing the parliament?

6. The Hon'ble Supreme Court of India while considering the constitutionality of the Members of Parliament Local Area Development Scheme (MPLAD Scheme) in Bhim Singh V/s UOI & others (2010) 5 SCC 538, held that,

"35. If we analyse the above-mentioned articles and the Rules of Procedure, the argument that the Appropriation Act by itself is not sufficient to satisfy the requirements of Article 266 (3) cannot be accepted. It is true that the activity of spending monies on various project has to be separately provided for by a law. However, if the Union government intends to spend money for public purpose and for implementing various welfare schemes, the same is permitted by presenting an Appropriation Bill which is a Money Bill and by laying the same before the houses of parliament and after getting the approval of parliament, Lok Sabha, in particular, its becomes law and there cannot be any impediment in implementing the same so long as the schemes is for the public purpose".

7. The Apex Court in this case cited the case of Ram Jawaya Kapur v. State of Punjab AIR 1955 SC 549 and refer the paras 15 & 16 which reads as under:-

"15... After the grant is sanctioned, an Appropriation Bill is introduced to provide for the appropriation Bill is introduced to provide for the appropriation out of the introduced to provide for the appropriation out of the Consolidated Fund of the State of all money required to meet the grant thus made by the Assembly (Article 204). As soon as the Appropriation Act is passed, the expenditure made under the heads covered by it would be deemed to be properly authorized by law under Article 266 (3) of the Constitution.

16. The expression 'law; here obviously includes the Appropriation Acts. It is true that the Appropriation Acts cannot be said to give a direct legislative sanction to the trade activities themselves. But so long as the trade activities are carried on in pursuance of the policy which the executive Government has formulated with the tacit support of the majority in the legislature, no objection on the score of their not the majority in the legislature, no objection on the score of their not being sanctioned ley specific legislative provision can possibly be raised."

Objections could be raisers only in regard to the expenditure of public funds for carrying on of the trade or business and to these Appropriation Acts would afford a complete answer".

8. From the above it is clear that the expenditure would be deemed to be properly authorized by law under Article 266(3) of the Constitution.

9. In view of the above, allotting of Rs.1,900 crores which for the purpose of issue of Aadhaar numbers by the Government in the Budget may not be tantamount to the executive circumventing the Parliament.

10. Issue No. (iv): Whether issue of Aadhaar numbers before passing of the Bill involving colossal expenditure to the exchequer is a violation of the fundamental right to privacy of the citizen under Article 21 of the constitution. It is established by law that Right to Privacy is a guaranteed right under Article 21 of Constitution of India. The Hon'ble

"26 we may now summarize the broad principles flowing from the above discussion

(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise, and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency Article 19(2) an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicized in press/media.

(3) There is yet another exception to the rule in (1) above - indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.

(4) So far as the Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.

(5) Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(6) There is no law empowering the State or its official to prohibit, or to impose a prior restraint upon the press/media.

11. It is submitted that according to the Administrative Ministry, the enrolment for UID scheme is voluntary. The Apex Court has made it clear that there will be no violation of Right to Privacy, if the consent is taken from the concerned person at his free volition. Accordingly, it may not violate the fundamental right to privacy of a citizen.

Since, the issues involved interpretation of various provisions of Constitution of India it may consider prudent to solicit the opinion of Ld. Attorney General on the above said issues.

May kindly see.

Sd/-
(O. Venkateswarulu)
Assistant Legal Adviser,
26.07.2011

Additional Secretary (Shri R.L. Koli)

Law Secretary

OFFICE OF SHRI GOOLAM E VAHANVATI
ATTORNEY GENERAL FOR INDIA

[FTS Dy. No. 2130/LS/11-UIAI - AG Dy. II/3/0pin]

1. I have seen the reference dated 26th July, 2011.
2. The Unique Identification Authority of India (UIDAI) was constituted and notified by the Planning Commission on 28th January, 2009 as an attached office under the aegis of the Planning Commission. The role and responsibilities of the UIDAI were laid down in the Notification.
3. On 2nd July, 2009, Mr. Nandan Nilekani was appointed as the Chairperson in the rank and status of a Cabinet Minister. He assumed charge on 23rd July, 2009 and since then the Authority has been functioning.
4. Prime Minister's Council on UIDAI was constituted on 30th July, 2009 under the Chairmanship of the Prime Minister. The first meeting was held on 12th August, 2009. Pursuant to the mandate given by the Prime Minister's Council, the UIDAI has been going ahead with the implementation of the Scheme.
5. On 22nd October, 2009, the Government of India constituted a Cabinet Committee on UID Authority.
6. On 5th April, 2010, an opinion was sought, from the Solicitor General and two queries were raised as under:
 - (i) Whether in absence of a specific enabling law, would there be any constraints in collecting the data and (including biometrics) and in issuing the UID numbers to residents in accordance with the mandate given to the Authority?
 - (ii) If the answer to the question at (i) above is in the affirmative, what should be the roadmap in the interim so that the work of UIDAI can continue as per the mandate till the specific law is put in place?
7. The Law Ministry, however, by its opinion dated 15th June, 2010, opined as follows:

"5. In view of the foregoing discussion we are of the opinion that till a legislation is passed, the authority can continue functioning under the executive order and collect information/data for implementation of the UID Scheme. Such implementation can be done by giving wide publicity to the scheme and by persuading the agencies/individuals to part with necessary information. However, if any agency/individual is not willing to provide the desired information no legal action can be taken in the absence of a statutory backing.

6. The legal position in the matter being free from doubt, there appears to be no necessity to bother Ld. Solicitor General of India on this issue at this stage. The UIDAI may expedite providing a broad framework of the legislation which will be examined by this Department before the draft Bill is prepared by Legislative Department of this Ministry."
8. This opinion was given at a time when the Bill was under drafting.
9. An analysis of the Statement of Objects and Reasons dated 8th November, 2010 shows that there is a fundamental misunderstanding underlying the apprehensions raised. The Bill itself shows that the UIDAI has been functioning under the Notification dated 28th January, 2009. Further, it is now proposed to have a new Authority. It would be a Statutory Authority for carrying out functions of issuing identification numbers to the residents in India in an effective manner.

It is important to note two provisions of the draft Bill, namely, section 22 and section 57, which read as follows:

22. On and from the establishment of the Authority --

(1) all the assets and liabilities of the Unique Identification Authority of India, established vide notification of the Government of India in the Planning Commission number A-43011/02/2009-Admin.I. dated the 28th January, 2009, shall stand transferred to and vested in, the Authority:

Explanation -- the assets of such Unique Identification Authority of India shall be deemed to include all rights and powers, and all properties, whether movable or immovable including, in particular, cash balances, deposits and all other interests and rights in, or arising out of:

Such properties as may be in the possession of such Unique Identification Authority of India and till books of account and other documents relating to the same; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind;

(2) without prejudice to the provisions of sub-section (1), all data and information collected during enrolment, all details of authentication performed, debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for such Unique Identification Authority of India immediately before that day, for or in connection with the purpose of the said Unique identification Authority of India, shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the Authority;

(3) all sums of money due to the Unique Identification Authority of India immediately before that day shall be deemed to be due to the Authority; and

(4) all suits and other legal proceedings instituted or which could have been instituted by or against such Unique Identification Authority of India immediately before that day may be continued or may be instituted by or against the Authority.

"57. Anything done or any action taken by the Central Government under the Resolution of the Government of India, Planning commission bearing Notification A-43011/02/2009-Admin.I dated the 28th January, 2009; shall be deemed to have been done or taken under the corresponding provisions of this Act."

11. It is, therefore, clear that the Authority, which is already functioning, will continue to function as such under the executive orders already issued. Thereafter, when the Bill is passed and the Act is brought into force, it will be replaced by a crew statutory authority. All the assets and liabilities of the UIDAI constituted under the Notification dated 28th January, 2009 will be vested in the new Authority. Anything done or taken under the Notification dated 28th January, 2009 will be deemed to have been done under the corresponding provisions of the Act.

12. What is, therefore, contemplated is a seamless transition from an executive authority into a statutory authority. If the view taken by the Law Ministry is correct and, in my opinion it is, notwithstanding the absence of an Act the UIDAI could function as such under the executive order dated 28th January, 2009 and indeed it has been so functioning. All amounts allocated for its functioning must have been sanctioned under the Appropriation Bill and approved by Parliament (The Lok Sabha).

13. In the light of the aforesaid, I will deal with the 4 queries as under:

Q.(i) Whether Aadhaar numbers (as envisaged under clause 3(2) of the National Identification Authority of India Bill, 2010) can be issued before the passing of the National Identification of India Bill, 2010 by the Parliament?

Q (ii) Whether issuing Aadhaar numbers before the passing of the National Identification Authority of India Bil, 2010 tantamount to overreaching and circumventing the Parliament by the executive?

500.

A(i) & (ii) Queries (i) and (ii) above are inter-related and may be dealt with together. The Authority is presently functioning under the executive Notification dated 28th January, 2009. What is sought to be done is to convert executive authority into a statutory Authority. I have already analyzed the provisions of the Bill. There is nothing in law or otherwise which prevents the authority from functioning as an executive authority. As and when the Bill is passed and the Act is brought into force, all actions taken by the executive authority shall be deemed to have been passed by the new Authority. Therefore, there is nothing illegal in the continuation of the functioning of the Authority.

Q (iii) Whether allotting Rs.1900 crores which for the purpose of issue of Aadhaar numbers by the Government in the Budget tantamount to the executive circumventing the Parliament?

A. Rs.1900 crores which have been allocated in the Budget have been sanctioned by the Parliament. Parliament sanctions various expenditures under the detailed financial procedure which is laid down under the Constitution. This has been analyzed at length in the judgment of the Supreme Court in Bhim Singh v. UOI and Ors.- (2010) 5 SCC 538. Once Government presents an appropriation Bill and the same is approved by the Parliament, Lok Sabha in particular, the expenditure is validated and there is no question of the executive, circumventing Parliament. On the contrary, in matters of expenditure it is Parliament which is supreme and has full control. Once sanctioned by Parliament, the expenditure by the executive is authorized.

Q.(iv) Whether issue of Aadhaar numbers before passing of the Bill involving colossal expenditure to the exchequer is a violation of the fundamental right to privacy of the citizen under Article 21 of the Constitution?

A. In the first instance, I do not consider the issuance of Aadhaar numbers to be a violation of right to privacy contained in Article 21 of the Constitution. As a matter of fact the purpose of issuing Unique Identification Numbers is salutary and the effect will be to enable a large section of the Indian population, who is hitherto unable to get full benefits of the membership of an organized society to participate and avail of such benefits.

Secondly the manner in which the Authority is functioning does not violate the right to privacy. On the contrary, due care is taken to preserve privacy. Thirdly, participation in the Scheme is voluntary. In my opinion, right to privacy under Article 21 is not violated.

Sd/-
(Goolam E. Vahanavati)
Attorney General for India
6.8.2011

AS (Shri R.L. Koli)

Note: Related notes of Ministry of Law & Justice to seek the above opinion and their subsequent notes to convey their opinion to UIDAI/Planning Commission are also attached.

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Ministry of Law & Justice
Department of Legal Affairs

Subject: Issue of Aadhaar numbers till the passing of the National Identification Authority of India Bill, 2010, Opinion of the Ld. Attorney General of India.

The reference was made to the Attorney General to solicit his opinion on the following issues: (F/X)

(i) Whether Aadhaar numbers (as envisaged under clause 3(2) of the National Identification Authority of India Bill, 2010) can be issued before the passing of the National Identification Authority of India Bill, 2010 by the Parliament?

(ii) Whether issuing Aadhaar numbers before the passing of the National Identification Authority of India Bill, 2010 tantamount to overreaching and circumventing the Parliament by the executive?

(iii) Whether allotting Rs.1900 crores which for the purpose of issue of Aadhaar numbers by the Government in the Budget tantamount to the executive circumventing the Parliament?

(iv) Whether issue of Aadhaar numbers before passing of the Bill involving colossal expenditure to the exchequer, is a violation of the fundamental right to privacy of the citizen under Article 27 of the constitution.

The Ld. A.G. has examined the above points/issues and rendered his opinion as follows:

Issue (i) & (ii): The authority is presently functioning under the executive notification and there is nothing in law or otherwise which prevent the authority from functioning as executive authority. As and when the bill is passed and the Act is brought into force, all actions taken by the executive authority shall be deemed to have been passed by the new authority. Therefore, there is nothing illegal in the continuation of functioning of the authority.

Issue No.(iii): The Ld. Attorney General opined in the light of the judgment of the Apex Court in Bhim Singh V/s UOI & Others (2010) 5 SCC 538 that once Government presents an appropriation Bill and the same is approved by the Parliament, Lok Sabha in particular, the expenditure is validated and there is no question of the executive circumventing Parliament. On the contrary, in matters of expenditure, it is Parliament which is supreme and has full control. Once sanctioned by Parliament, the expenditure by the executive is authorized.

Issue No.(iv): The Ld. A.G. stated that: "I do not consider the issue of Aadhaar numbers to be a violation of right to privacy contained.

In Article 21 of the Constitution". The Ld. A.G further opined that "the manner in which the Authority is functioning does not violate the right to privacy. On the contrary, the care is taken to preserve privacy" and also advised that "participation in the Scheme is voluntary. In my opinion, right to privacy under Article 21 is not violated"

In view of the above, if approved, the views/opinion of the Ld. Attorney General may be communicated.

May kindly see.

Sd/-
(O. Venkateswarulu)
Asst. Legal Adviser
10.08.2011

Sd/- 10.8.11
Additional Secretary (Shri R.L. Koli)